arisen which rendered it impossible for the corporation to perform the purpose for which it was organized. *Held,* that on proof of facts which show clearly that it will be impossible for the corporation to carry out the purpose for which it was created, a court of equity will dissolve it and distribute its assets among those entitled thereto. *Decatur Land Co. et al* v. *Robinson,* (Ala. 1913) 63 So. 522.

The general rule is that a court of equity has no jurisdiction to dissolve a corporation and distribute its assets on the application of a stockholder, *Wheeler* v. *Pullman Iron etc., Co.,* 143 Ill. 197, 32 N. E. 420, and the reason given is that the corporation has the right to manage its own property according to its own judgment which is evidenced by the judgment of its directors, but this reason does not apply where the directors act illegally or fraudulently or otherwise outside the scope of their employment, *Manufacturers' Land and Improvement Co.* v. *Cleary,* 28 Ky. Law Rep. 359, 89 S. W. 248; *Heitkamp* v. *American Pigment & Chemical Co.,* 158 Ill. App. 587. The important point is whether it applies where it is impossible for the corporation to perform the functions for which it was organized. Mere non-user alone will not dissolve and is not grounds for dissolution, MARSHALL, CORPORATIONS, § 157; *Boston Glass Manufactory* v. *Langdon,* 24 Pick. (Mass.) 49, 35 Am. Dec. 292., and it was held in *Kinclad* v. *Dwinelle,* 59 N. Y. 548, that a corporation is not ipso facto dissolved by an injunction restraining it from the exercise of its corporate franchises; nor is it dissolved by other facts arising which render it unable to continue the business for which it was created, *Sleeper* v. *Goodwin,* 67 Wis. 577; but in *Rex* v. *Passmore,* 3 Term R. 245, it was said that "Whenever a corporation is reduced to such a state as to be incapable of acting or continuing itself, it is dissolved"; and it was held in *Moore* v. *Whitcomb,* 48 Mo. 543, that if a corporation suffers acts to be done which have the effect of destroying the end and object for which it was created, it is equivalent to a surrender of its right to exist. But whether or not the corporation is dissolved ipso facto, the courts seem to hold with the principal case that such facts are grounds for dissolution and distribution on a suit by a minority stockholder, *Ross* v. *American Co.,* 155 Ala. 258, 43 So. 817; *Minona Co.* v. *Reese,* 167 Ala. 485, 52 So. 523; *Schmidt* v. *Huntington,* 1 Cal. 55; *Reinhardt* v. *Tel. Co.,* 71 N. J. Eq. 70; *Stevens* v. *Empire Casualty Co.,* 180 Fed. 283; *Parr* v. *Coal Co.* (W. Va. 1913) 77 S. E. 894.

CORPORATIONS—SYNDICATE AGREEMENTS—CONSTRUCTIVE FRAUD AS AFFECTING THE RIGHTS OF SUBSCRIBERS.—Defendant Edenborn was one of the managing officers of a syndicate organized to take over the United States Iron Company and to buy other property. The corporation was reorganized, the property purchased, and the stock issued, when the plaintiff, one of the subscribers to whom stock had been issued, discovering that the defendant had a personal interest in the property purchased, tendered to him the stock received in the reorganized company and sued to recover the purchase price. *Held,* the contract having been fully executed, there remained no right in the individual subscriber to rescind, but such right must be worked

out through the reorganized purchasing company.. *Edenborn* v. *Sim,* (C. C. A. 2nd Circ. 1913) 206 Fed. 275.

In Old Dominion Copper Co. v. *Lewisohn,* 126 Fed. 915, 148 Fed. 1020, 210 U. S. 206, it was held that the syndicate managers, being the sole owners of all the stock at the time of the transaction, are the corporation, and therefore the corporation has acquiesced in the purchase, and the purchasers from the corporation are bound by its acquiescence, *Foster* v. *Seymour,* 23 Fed. 65; *McCracken* v. *Robinson,* 57 Fed. 375; *Barr* v. *N. Y., etc. R. R. Co.,* 125 N. Y. 263; *Blum* v. *Whitney,* 185 N. Y. 232; *Tompkins* v. *Sperry,* 96 Md. 560. But the authorities cited do not support that doctrine in its entirety, for it appears that in those cases all the capital stock was issued to the directors and promoters, and the transaction was therefore actually acquiesced in by all who it was contemplated should be interested in the corporation, except as to those who should acquire an interest from one of these parties. In such a case it may well be that such third parties are bound by the acquiescence of their vendors. But in the principal case not only was it contemplated that other shares would be put on the market, but the managers were under contract to issue stock to those plaintiffs as subscribers to the syndicate agreement. The agreement to purchase was not made to bind the old corporation, but to bind the reorganized company; and the acquiescence of the managers is not, in such a case, the acquiescence of the reorganized company, *Old Dominion Copper Co.* v. *Bigelow,* 188 Mass. 315, 74 N. E. 653, 108 Am. St. Rep. 479; *Erlanger* v. *New Sombrero Phosphate Co.,* 3 App. Cas. 1218. Consequently, there being fraud on the part of the managers, and no waiver of, or bar to, the plaintiffs' rights, the defendant must be held liable. But the question arises, who is the proper party plaintiff, the individual subscriber or the reorganized company? If the individual subscriber is allowed to rescind and sue for the subscription price, the defendant cannot be placed in his original position; the entire operation may fail and the defendant be held liable for all, even though the value of the property sold to the corporation be relatively small. On the other hand, if the suit is brought in the name of the corporation, it may be that the holders of a very small percentage of the stock will be using the name of the corporation to assert rights that will inure to the benefit of the holders of a majority of the stock who, because of their knowledge of the fraud, are totally without claim. This was one of the reasons for refusing a recovery in *Old Dominion Copper Co.* v. *Lewisohn,* supra, but was held to be the proper way to bring the suit in *Erlanger* v. *New Sombrero Phosphate Co.,* supra, and in *Old Dominion Copper Co.* v. *Bigelow,* supra. As said in the principal case, "It may well happen that because of the peculiar situation of any particular case, no right of rescission exists in favor of one who has been led by fraud into a complicated agreement that has been fully executed. We think this such a case." The action must be brought in the corporate name, not to rescind the subscription, but to recover the secret profits made by the defendant, or any damage sustained by the company by reason of the fraud.